UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS, AUSTIN DIVISION

YETI Coolers, LLC,

Plaintiff,

v.

Great American Products, Ltd.,

Defendant.

Case No.

COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF FOR:

(1) TRADE DRESS INFRINGEMENT IN VIOLATION OF 15 U.S.C. § 1125(a);
(2) UNFAIR COMPETITION AND FALSE DESIGNATION OF ORIGIN IN VIOLATION OF 15 U.S.C. § 1125(a);
(3) TRADE DRESS DILUTION IN VIOLATION OF 15 U.S.C. § 1125(c);
(4) TRADEMARK DILUTION IN VIOLATION OF TEX. BUS. & COM. CODE § 16.103;
(5) COMMON LAW TRADE DRESS INFRINGEMENT;
(6) COMMON LAW UNFAIR COMPETITION;
(7) COMMON LAW MISAPPROPRIATION; AND
(8) UNJUST ENRICHMENT.

Jury Trial Demanded

COMPLAINT

Plaintiff, YETI Coolers, LLC ("YETI"), for its complaint against Great American Products, Ltd. ("Defendant"), based on knowledge and on information and belief as appropriate, alleges as follows:

The Parties

1. YETI is a company organized and existing under the laws of the State of Delaware with a principal place of business at 5301 Southwest Parkway, Suite 200, Austin, TX 78735.

2. Upon information and belief, Defendant is a corporation organized under the laws of the State of Texas with a principal place of business at 1661 South Seguin Avenue, New Braunfels, TX 78130.

Jurisdiction and Venue

3. This is an action for trade dress infringement, unfair competition and false designation of origin, trade dress dilution, misappropriation, and unjust enrichment. This action arises under Texas Business & Commerce Code, state common law, including the law of Texas, federal common law, and the Trademark Act of 1946, 15 U.S.C. § 1051, *et seq*. ("Lanham Act").

4. This Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

5. Defendant did and continues to advertise, offer for sale, and sell infringing insulated drinkware products to customers, including customers in the State of Texas and in this District.

6. This Court may exercise personal jurisdiction over Defendant based upon Defendant's contacts with this forum, including at least Defendant's tortious acts giving rise to this lawsuit within this district, and Defendant's regular and intentional conduct of business here.

7. Venue is proper in this judicial district pursuant to at least 28 U.S.C. §§ 1391(b) and (c).

General Allegations – YETI's Trade Dress

8. For many years, YETI has engaged in the development, manufacture, and sale of premium, heavy-duty insulated drinkware. YETI created unique, distinctive, and non-functional designs to use with YETI's insulated drinkware. YETI has extensively and continuously promoted and used these designs in the United States and in Texas. Through that extensive and

continuous use, the YETI designs have become a well-known indicator of the origin and quality of YETI insulated drinkware. The YETI designs also have acquired substantial secondary meaning in the marketplace and have become famous. YETI owns trademark and trade dress rights relating to the source identifying features of its insulated drinkware designs.

9. Specifically, YETI sells an insulated drinkware product, the "YETI® 30 oz. Rambler™ Tumbler" hereinafter referred to as "the Rambler Tumbler." As a result of YETI's considerable investments and efforts, the Rambler Tumbler is designed and built to provide extreme insulating capabilities and exceptional durability. YETI has invested substantially in the design, development, manufacture, and marketing of the Rambler Tumbler.

10. YETI has enjoyed significant sales of the Rambler Tumbler throughout the United States, including sales to customers in the state of Texas. YETI has expended significant resources advertising and marketing the Rambler Tumbler.

11. The Rambler Tumbler design has distinctive and non-functional features that identify to consumers that the origin of the Rambler Tumbler is YETI. Illustration 1 below shows exemplary images of the Rambler Tumbler sold by YETI.

Illustration 1: Exemplary Images of a YETI 30 oz. Rambler Tumbler

12. As a result of YETI's continuous and exclusive use of the design, YETI's marketing, advertising and sales of the design, and the highly valuable goodwill and substantial secondary meaning acquired as a result, YETI owns trade dress rights in the Rambler Tumbler design.

13. YETI's trade dress rights in the design and appearance of the Rambler Tumbler, includes, but is not limited to, (1) the design and appearance of the walls of the tumbler, (2) the design, appearance and placement of the taper in the side wall of the tumbler; (3) the design, appearance and placement of the upper portion, mid portion and bottom portion of the side wall of the tumbler, alone and in combination; (4) the design, appearance and placement of the style line around the base of the tumbler; (5) the design, appearance and placement of the tab on the lid of the tumbler; (6) the placement of the drinking opening on the lid of the tumbler; (7) the design, appearance and placement of the top plane of the lid of the tumbler; (8) the design, appearance and placement of the side walls of the lid of the tumbler; and (9) the color contrast

and color combinations of the tumbler and the tumbler lid; whether these elements are alone or in any combination with each other, and including the overall look and appearance of the tumbler and tumbler lid. These features, alone or in combination, and including the overall look and appearance of the Rambler Tumbler, are collectively hereafter referred to as the "YETI Trade Dress."

14. As a result of YETI's exclusive, continuous and substantial use, advertising, and sales of insulated drinkware products bearing the YETI Trade Dress, and the publicity and attention that has been paid to the YETI Trade Dress, the YETI Trade Dress has become famous and has acquired valuable goodwill and substantial secondary meaning in the marketplace, as consumers have come to uniquely associate it as a source identifier of YETI.

General Allegations – Defendant's Unlawful Activities

15. Defendant has and is continuing to misappropriate the goodwill and secondary meaning in the YETI Trade Dress in the Rambler Tumbler. Defendant is purposefully advertising, offering for sale and selling insulated drinkware products that include the YETI Trade Dress (the "Infringing Products"). Defendant's insulated drinkware products are offered in the same size as YETI's own products. Defendant's insulated drinkware products are confusingly similar imitations of the Rambler Tumbler and the YETI Trade Dress. Defendant's actions infringe and dilute YETI's Trade Dress rights, constitute unfair competition and false designation of origin, as well as unjust enrichment, misappropriation, and common law trademark infringement.

16. Illustration 2 below shows examples of Defendant's Infringing Products.

Illustration 2: Exemplary Images of Defendant's Infringing Products	

17. YETI used the YETI Trade Dress extensively and continuously before Defendant began selling, offering to sell, distributing, or advertising the Infringing Products. Moreover, the YETI Trade Dress became famous and acquired secondary meaning in the United States and in the State of Texas before Defendant commenced its use of the YETI Trade Dress.

18. YETI never authorized Defendant to sell, offer to sell, distribute, or advertise the Infringing Products.

19. Defendant engages in substantial activity in Texas and this District. Examples of Defendant's activity include: (i) Defendant's principal place of business is in this District, (ii) Defendant sells its products in Texas and in this District, and (iii) Defendant's principal website reaches into Texas, including in this District.

20. As a result of Defendant's activities related to the Infringing Products, there is a strong likelihood of confusing associations in the marketplace between the Infringing Products and Defendant on the one hand, and the Rambler Tumbler, the YETI Trade Dress and YETI on the other hand, that is indicative of consumer confusion and misappropriation of YETI's hard-earned rights and goodwill in the YETI Trade Dress.

21. On information and belief – as evidenced at least by the facts and circumstances alleged above – Defendant's infringements have been intentional and willful, in bad faith, and manifest a deliberate and knowing disregard of YETI's trade dress rights, making this an exceptional case under 15 U.S.C. § 1117, entitling YETI to, among other things, Defendant's profits, actual damages, enhanced damages, and attorneys' fees under at least Tex. Bus. & Com. Code § 16.104 and/or 15 U.S.C. § 1117.

Count I:
Trade Dress Infringement under Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a)

22. YETI re-alleges each and every allegation set forth in paragraphs 1 through 21, inclusive, and incorporates them by reference herein.

23. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) by infringing YETI's rights in the YETI Trade Dress. Defendant's use of the YETI Trade Dress and/or colorable imitations thereof is likely to cause confusion, mistake or deception as to the affiliation, connection or association of Defendant with YETI and as to the origin, sponsorship or approval of the Infringing Products.

24. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has extensively and continuously promoted and used the YETI Trade Dress in the United States. Through that extensive and continuous use, the YETI Trade Dress has become a well-known indicator of the origin and quality of YETI insulated drinkware products. The YETI Trade Dress has also acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

25. Defendant's use of the YETI Trade Dress and colorable imitations thereof is likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of the

Infringing Products, at least by creating the false and misleading impression that the Infringing Products are manufactured by, authorized by, or otherwise associated with YETI.

26. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress.

27. On information and belief, Defendant's use of the YETI Trade Dress and colorable imitations thereof has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

28. YETI is entitled to injunctive relief, and YETI is entitled to recover at least Defendant's profits, YETI's actual damages, enhanced damages, costs, and reasonable attorney fees under 15 U.S.C. §§ 1116 and 1117.

Count II:
Unfair Competition and False Designation of Origin under Section 43(a)
of the Lanham Act, 15 U.S.C. § 1125(a)

29. YETI re-alleges each and every allegation set forth in paragraphs 1 through 28 above, inclusive, and incorporates them by reference herein.

30. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products, in direct competition with YETI, violates Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a) and constitutes unfair competition, at least because the Defendant has obtained an unfair advantage as compared to YETI, through its use of the YETI Trade Dress and/or colorable imitations thereof, to falsely designate the origin, affiliation or sponsorship of Defendant and of the Infringing Products.

31. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has extensively and continuously promoted and used the YETI Trade Dress in the United States.

Through that extensive and continuous use, the YETI Trade Dress has become a well-known indicator of the origin and quality of YETI insulated drinkware products. The YETI Trade Dress has also acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

32. Defendant's use of the YETI Trade Dress and colorable imitations thereof constitutes a false designation of origin that is likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of the Infringing Products, at least by creating the false and misleading impression that the Infringing Products are manufactured by, authorized by, or otherwise associated with YETI.

33. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress.

34. On information and belief, Defendant's use of the YETI Trade Dress and colorable imitations thereof has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

35. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Defendant's profits, YETI's actual damages, enhanced damages, costs, and reasonable attorney fees under 15 U.S.C. §§ 1116 and 1117.

Count III:
Trade Dress Dilution under Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c)

36. YETI re-alleges each and every allegation set forth in paragraphs 1 through 35 above, inclusive, and incorporates them by reference herein.

37. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products violates Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

38. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. The YETI Trade Dress has acquired distinctiveness through YETI's extensive and continuous promotion and use of the YETI Trade Dress in the United States. Through that extensive and continuous use, the YETI Trade Dress has become a famous, well-known indicator of the origin and quality of YETI insulated drinkware products throughout the United States, and is widely recognized by the general consuming public as a designation of the source of YETI's insulated drinkware products. The YETI Trade Dress also has acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress became famous and acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

39. Defendant's use of the YETI Trade Dress and colorable imitations thereof is likely to cause, and has caused, dilution of the famous YETI Trade Dress at least by eroding the public's exclusive identification of the famous YETI Trade Dress with YETI, by lessening the capacity of the famous YETI Trade Dress to identify and distinguish YETI insulated drinkware products, by associating the YETI Trade Dress with products of inferior quality, and by impairing the distinctiveness of the famous YETI Trade Dress.

40. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused, and, unless enjoined, will continue to cause, substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress.

41. On information and belief, Defendant's use of the YETI Trade Dress and colorable imitations thereof has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

42. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Defendant's profits, actual damages, enhanced profits and damages, costs, and reasonable attorney fees under 15 U.S.C. §§ 1125(c), 1116, and 1117.

Count IV:
Trade Dress Dilution under Tex. Bus. & Com. Code § 16.103

43. YETI re-alleges each and every allegation set forth in paragraphs 1 through 42 above, inclusive, and incorporates them by reference herein.

44. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products violate Section 16.103 of the Texas Business & Commerce Code.

45. The YETI Trade Dress is entitled to protection under Texas law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has extensively and continuously promoted and used the YETI Trade Dress in the United States and in the State of Texas. Through that extensive and continuous use, the YETI Trade Dress has become a famous and well-known indicator of the origin and quality of YETI insulated drinkware products in the United States and in the State of Texas, and the YETI Trade Dress is widely recognized by the public throughout Texas as a designation of the source of YETI's insulated drinkware products. The YETI Trade Dress also acquired substantial secondary meaning in the marketplace, including in the State of Texas. Moreover, the YETI Trade Dress became famous and acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

46. Defendant's use of the YETI Trade Dress and colorable imitations thereof is likely to cause, and has caused, dilution of the famous YETI Trade Dress at least by eroding the public's exclusive identification of the famous YETI Trade Dress with YETI, by lessening the capacity of the famous YETI Trade Dress to identify and distinguish YETI insulated drinkware products, by associating the YETI Trade Dress with products of inferior quality, and by impairing the distinctiveness of the famous YETI Trade Dress.

47. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused, and, unless enjoined, will continue to cause, substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress.

48. On information and belief, Defendant's use of the YETI Trade Dress and colorable imitations thereof has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

49. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Defendant's profits, actual damages, enhanced profits and damages, and reasonable attorney fees under at least Tex. Bus. & Com. Code § 16.104

Count V:
Common Law Trademark Infringement

50. YETI re-alleges each and every allegation set forth in paragraphs 1 through 49 above, inclusive, and incorporates them by reference herein.

51. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products, in direct competition with YETI, constitute common law trademark infringement, at least because the Defendant's use of the YETI Trade Dress and/or colorable imitations thereof is likely to cause consumer confusion as to the origin and/or sponsorship/affiliation of the Infringing Products.

52. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has extensively and continuously promoted and used the YETI Trade Dress in the United States and the State of Texas. Through that extensive and continuous use, the YETI Trade Dress has become a well-known indicator of the origin and quality of YETI insulated drinkware products. The YETI Trade Dress has also acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress acquired this secondary meaning before Defendant commenced

its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

53. Defendant's use of the YETI Trade Dress and colorable imitations thereof is likely to cause consumer confusion as to origin and/or sponsorship/affiliation of the Infringing Products, at least by creating the false and misleading impression that the Infringing Products are manufactured by, authorized by, or otherwise associated with YETI.

54. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress.

55. On information and belief, Defendant's use of the YETI Trade Dress and colorable imitations thereof has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

56. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least YETI's damages, Defendant's profits, punitive damages, costs, and reasonable attorney fees.

Count VI:
Common Law Unfair Competition

57. YETI re-alleges each and every allegation set forth in paragraphs 1 through 56 above, inclusive, and incorporates them by reference herein.

58. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products, in direct competition with YETI, constitute common law unfair competition, at least by palming off/passing off of the Defendant's goods and/or by simulating the YETI Trade Dress in an intentional and calculated manner.

59. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has

extensively and continuously promoted and used the YETI Trade Dress for years in the United States and the State of Texas. Through that extensive and continuous use, the YETI Trade Dress has become a well-known indicator of the origin and quality of YETI insulated drinkware products. The YETI Trade Dress has also acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

60. Defendant's use of the YETI Trade Dress and colorable imitations thereof is likely to cause consumer confusion as to origin and/or sponsorship/affiliation of the Infringing Products, at least by creating the false and misleading impression that the Infringing Products are manufactured by, authorized by, or otherwise associated with YETI.

61. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress.

62. On information and belief, Defendant's use of the YETI Trade Dress and colorable imitations thereof has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress, as demonstrated in Illustration 2 above, and by the Defendant's continuing disregard for YETI's trade dress rights.

63. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least YETI's damages, Defendant's profits, punitive damages, costs, and reasonable attorney fees.

Count VII:
Common Law Misappropriation

64. YETI re-alleges each and every allegation set forth in paragraphs 1 through 63 above, inclusive, and incorporates them by reference herein.

65. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products, in direct competition with YETI, constitute common law misappropriation.

66. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has extensively and continuously promoted and used the YETI Trade Dress for years in the United States and the State of Texas. Through that extensive and continuous use, the YETI Trade Dress has become a well-known indicator of the origin and quality of YETI insulated drinkware products. The YETI Trade Dress has also acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

67. YETI created the products covered by the YETI Trade Dress through extensive time, labor, effort, skill and money. Defendant has wrongfully used the YETI Trade Dress and/or colorable imitations thereof in competition with Plaintiffs and gained a special advantage because they were not burdened with the expenses incurred by YETI. Defendant's use of the YETI Trade Dress and colorable imitations thereof is likely to cause consumer confusion as to origin and/or sponsorship/affiliation of the Infringing Products, at least by creating the false and misleading impression that the Infringing Products are manufactured by, authorized by, or otherwise associated with YETI.

68. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable commercial injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress. Moreover, a result of its misappropriation, Defendant has profited and, unless such conduct is enjoined by this Court, will continue to profit by misappropriating the time, effort and money that YETI invested in establishing the reputation and goodwill of the YETI Trade Dress.

69. Defendant's misappropriation of the YETI Trade Dress has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

70. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least YETI's damages, Defendant's profits, punitive damages, costs, and reasonable attorney fees.

Count VIII:
Unjust Enrichment

71. YETI re-alleges each and every allegation set forth in paragraphs 1 through 70 above, inclusive, and incorporates them by reference herein.

72. Defendant's offers to sell, sales, distribution, and/or advertisement of Infringing Products, in direct competition with YETI, constitute unjust enrichment, at least because Defendant has wrongfully obtained benefits at YETI's expense.

73. The YETI Trade Dress is entitled to protection under both federal and common law. The YETI Trade Dress uses unique, distinctive, and non-functional designs. YETI has extensively and continuously promoted and used the YETI Trade Dress for years in the United States and the State of Texas. Through that extensive and continuous use, the YETI Trade Dress has become a well-known indicator of the origin and quality of YETI insulated drinkware products. The YETI Trade Dress has also acquired substantial secondary meaning in the marketplace. Moreover, the YETI Trade Dress acquired this secondary meaning before Defendant commenced its use of the YETI Trade Dress and colorable imitations thereof in connection with the Infringing Products.

74. YETI created the products covered by the YETI Trade Dress through extensive time, labor, effort, skill and money. Defendant has and is wrongfully using the YETI Trade Dress and/or colorable imitations thereof in competition with YETI, and has and is gaining a

wrongful benefit by undue advantage, because they have not been burdened with the expenses incurred by YETI, yet is obtaining the resulting benefits for its own business and products.

75. Defendant's use of the YETI Trade Dress and colorable imitations thereof has caused and, unless enjoined, will continue to cause substantial and irreparable commercial injury to YETI for which YETI has no adequate remedy at law, including at least substantial and irreparable injury to the goodwill and reputation for quality associated with the YETI Trade Dress. YETI accumulated this goodwill and reputation through extensive time, labor, effort, skill, and investment. Defendant has and is wrongfully obtaining a benefit at YETI's expense by taking undue advantage and free-riding on YETI's efforts and investments, and enjoying the benefits of YETI's hard-earned goodwill and reputation.

76. Defendant's unjust enrichment at YETI's expense has been intentional, willful, and malicious. Defendant's bad faith is evidenced at least by the similarity of the Infringing Products to the YETI Trade Dress and by the Defendant's continuing disregard for YETI's trade dress rights.

77. YETI is entitled to injunctive relief, and YETI is also entitled to recover at least Defendant's profits.

DEMAND FOR JURY TRIAL

78. Plaintiff YETI Coolers LLC hereby demands a jury trial on all issues so triable as provided by Rule 38(a) of the Federal Rules of Civil Procedure.

Relief Sought

WHEREFORE, Plaintiff respectfully prays for:

1. Judgment that Defendant has (i) willfully infringed the YETI Trade Dress in violation of § 1125(a) of Title 15 in the United States Code; (ii) willfully engaged in unfair competition and false designation of origin in violation of § 1125(a) of Title 15 in the United States Code; (iii) willfully diluted the YETI Trade Dress in violation of § 1125(c) of Title 15 in the United States Code; (iv) willfully diluted the YETI Trade Dress in violation of Tex. Bus. &

Com. Code § 16.103; (v) willfully violated YETI's common law rights in the YETI Trade Dress; (vi) willfully engaged in common law unfair competition; (vii) willfully engaged in common law misappropriation; and (vii) been unjustly enriched at YETI's expense;

2. A preliminary and permanent injunction against further infringement and dilution of the YETI Trade Dress, and further acts of unfair competition, misappropriation and/or unjust enrichment by Defendant, and each of its agents, employees, servants, attorneys, successors and assigns, and all others in privity or acting in concert with any of them, including at least from selling, offering to sell, distributing, importing, or advertising the Infringing Products, or any other products that use a copy, reproduction, or colorable imitation of the YETI Trade Dress, pursuant to at least Tex. Bus. & Com. Code § 16.104 and 15 U.S.C. § 1116;

3. An Order directing Defendant to recall all Infringing Products sold and/or distributed and provide a full refund for all recalled Infringing Products;

4. An Order directing the destruction of (i) all Infringing Products, including all recalled Infringing Products, (ii) any other products that use a copy, reproduction, or colorable imitation of the YETI Trade Dress in Defendant's possession or control, (iii) all plates, molds and other means of making the Infringing Products in Defendant's possession, custody or control, and (iv) all advertising materials related to the Infringing Products in Defendant's possession, custody or control, including on the Internet, pursuant to at least 15 U.S.C. § 1118;

5. An Order directing Defendant to publish a public notice providing proper attribution of the YETI Trade Dress to YETI, and to provide a copy of this notice to all customers, distributors, and/or others from whom the Infringing Products are recalled;

6. An Order barring importation of Infringing Products and/or colorable imitations thereof into the United States, and barring entry of the Infringing Products and/or colorable imitations thereof into any customhouse of the United States, pursuant to 15 U.S.C. § 1125(b);

7. An award of Defendant's profits, YETI's actual damages, enhanced damages, exemplary damages, costs, prejudgment and postjudgment interest, and reasonable attorney fees pursuant to at least Tex. Bus. & Com. Code § 16.104 and 15 U.S.C. § 1117; and

8. Such other and further relief as this Court deems just and proper.

Respectfully submitted,
BAKER BOTTS L.L.P.

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ATTORNEYS FOR PLAINTIFF YETI COOLERS, LLC

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Yeti Coolers, LLC

(b) County of Residence of First Listed Plaintiff Travis, Texas
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Joseph Gray, Baker Botts L.L.P., 98 San Jacinto Blvd., #1500, Austin, Texas 78701 512-322-2500

DEFENDANTS

Great American Products, Ltd.

County of Residence of First Listed Defendant Hays, Texas
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plainti[ff] and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☒ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
15 U.S.C. § 1121

Brief description of cause:
Trade Dress Infringement

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ______ DOCKET NUMBER ______

DATE
08/06/2015

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # ______ AMOUNT ______ APPLYING IFP ______ JUDGE ______ MAG. JUDGE ______